

(3-2021)

Article 11: City of San Diego COVID-19 Worker Recall and Retention
(*“City of San Diego COVID-19 Worker Recall and Retention” added 9-8-2020
by Emergency Ordinance O-21231 N.S.; effective 9-8-2020.*)

Division 1: City of San Diego Service COVID-19 Worker Recall Ordinance
(*“City of San Diego Service COVID-19 Worker Recall Ordinance” added 9-8-2020
by Emergency Ordinance O-21231 N.S.; effective 9-8-2020.*)

§311.0101 Purpose and Intent

Since the declaration of a national public health emergency on January 31, 2020, the COVID-19 pandemic has caused many building service, hospitality, and travel-related employers in the *City* to discharge, lay off, and furlough workers. Through this Division, the *City* seeks to ensure that these workers enjoy a right to return to their previous jobs when business activity resumes in order to aid economic recovery.
(*“Purpose and Intent” added 9-8-2020 by Emergency Ordinance O-21231 N.S.; effective 9-8-2020.*)

§311.0102 Citation

This Division shall be cited as the City of San Diego COVID-19 Building Service and Hotel Worker Recall Ordinance.
(*“Citation” added 9-8-2020 by Emergency Ordinance O-21231 N.S.; effective 9-8-2020.*)

§311.0103 Definitions

For purposes of this Division defined terms appear in italics. The following definitions apply in this Division:

City means the City of San Diego.

Commercial property employer means an owner, operator, manager, or lessee, including a contractor, subcontractor, or sublessee, of a non-residential property located within the geographical boundaries of the *City* that employs 25 or more janitorial, maintenance, or security service employees. Only the janitorial, maintenance, and security service employees who perform work for a *commercial property employer* are covered by this Division.

Customary seasonal work means work performed by an individual during approximately the same part of each calendar year, such as summer or winter.

(3-2021)

Employer means a *commercial property employer*, a *hotel employer*, and an *event center employer*.

Event center employer means an owner, operator, or manager of a privately-owned structure of more than 50,000 square feet or 5,000 seats that is used for the purposes of public performances, sporting events, business meetings, or similar events, and includes concert halls, stadiums, sports arenas, racetracks, coliseums, and convention centers. The term *event center* also includes any contracted, leased, or sublet premises connected to or operated in conjunction with the *event center's* purpose, including food preparation facilities, ushering services, ticket-taking services, concessions, retail stores, restaurants, bars, and structured parking facilities. For purposes of this Division, *event center employer* does not include a governmental entity.

Hotel employer means the owner, operator, or manager of a residential building located within the geographical boundaries of the *City* with at least 200 guest rooms that provides temporary lodging in the form of overnight accommodations to transient patrons, and may provide additional services, such as conference and meeting rooms, restaurants, bars, or recreation facilities available to guests or to the general public. A *hotel employer* also includes the owner, operator, manager, or lessee of any contracted, leased, or sublet premises connected to or operated in conjunction with the building's purpose, or providing services at the building.

Laid-off employee means any individual who, in a particular week, performs at least two hours of work within the geographic boundaries of the *City* for an *employer*, has a *length of service* with the *employer* of six months or more in the 12 months preceding March 4, 2020, or in the case of an *event center employee*, 3 months or more in the 12 months preceding March 4, 2020, and whose most recent separation from active service, or failure to be scheduled for *customary seasonal work*, occurred on or after March 4, 2020, and before any termination of the Declaration of Emergency proclaimed by California's Governor on March 4, 2020, and was due to a government shutdown order, lack of business, a reduction in force or other, economic, non-disciplinary reason. For purposes of this Division, a *laid-off employee* does not include a manager, supervisor, or confidential employee.

Length of service means the total of all periods of time during which an *employee* has been in active service, including periods of time when the *employee* was on leave or on vacation.

(“Definitions” added 9-8-2020 by Emergency Ordinance O-21231 N.S.; effective 9-8-2020.)

§311.0104 Right of Recall

- (a) An *employer* must offer its *laid-off employees* in writing, by mailing to their last known physical address, and by email and text message to the extent the *employer* possesses such information, all job positions which become available after this Division's effective date for which the *laid-off employees* are qualified. A *laid-off employee* is qualified for a position if the *employee*:
- (1) held the same or similar position at the site of employment at the time of the *laid-off employee's* most recent separation from active service with the *employer*; or
 - (2) is or can be qualified for the position with the same training that would be provided to a new employee hired into that position.

The *employer* must offer positions to *laid-off employees* in an order of preference corresponding to categories (1) and (2) in the preceding sentence. Where more than one *employee* is entitled to preference for a position, the *employer* must offer the position to the *laid-off employee* with the greatest *length of service* for the *employer*.

- (b) A *laid-off employee* who is offered a position pursuant to this Division must be given no less than 3 business days in which to accept or decline the offer. An *employer* may make simultaneous, conditional offers of employment to *laid-off employees*, with the final offer of employment conditioned on application of the priority system set forth in Municipal Code section 311.0104 (a).
- (c) An *employer* that declines to recall a *laid-off employee* on the grounds of lack of qualifications and instead hires someone other than the *laid-off employee* must provide the *laid-off employee* a written notice of the non-selection within 30 days of the date of hire documenting the reasons for such decision. The written record must be retained for no less than 3 years and made available to the *City* or *laid-off employee* upon request.
- (d) An *employer* must provide each *laid-off employee* with a written notice of the date of their lay off and their rights under this Division. The employer must provide such written notice within 30 days of the effective date of this Division, if the lay off took place before that date, or at the time of the lay off if the lay off occurs after that date. Such notice shall be provided in person or to the *laid-off employee's* last known mailing address, and by email to the extent the employer possesses that information.

(3-2021)

- (e) An *employer* must retain the following records for at least 3 years regarding each *laid-off employee*: the employee's full legal name; the employee's job classification at the time of separation from employment; the employee's date of hire; the employee's last known address of residence; the employee's last known email address; the *employee's* last known telephone number; and a copy of the written notice regarding the lay off provided to the *employee*. For purpose of this Division, the 3 years is measured from the date of the date of the written notice provided under subsection (d).
- (f) The provisions of this Division also apply when the ownership of the *employer* changes due to a sale, assignment transfer, or other disposition of substantially all assets of the *employer*, after the *laid-off employee* separates from employment provided the enterprise is conducting the same or similar operation as before March 4, 2020.

(*"Right of Recall" added 9-8-2020 by Emergency Ordinance O-21231 N.S.; effective 9-8-2020.*)

§311.0105 Retaliatory Action Prohibited

No *employer* may terminate, refuse to employ, reduce in compensation, or otherwise take any adverse action against any *laid-off employee* for seeking to enforce his or her rights under this Division by any lawful means, for participating in proceedings related to this Division, for opposing any practice proscribed by this Division, or for otherwise asserting rights under this Division.

(*"Retaliatory Action Prohibited" added 9-8-2020 by Emergency Ordinance O-21231 N.S.; effective 9-8-2020.*)

§311.0106 Enforcement

This Division may be enforced as follows:

- (a) A *laid-off employee* may bring an action in the Superior Court of the State of California against an *employer* for violations of this Division and may be awarded all of the following, as appropriate:
- (1) Hiring and reinstatement rights pursuant to this Division.
 - (2) All actual damages (including, but not limited to, lost pay and benefits) suffered by the *laid-off employee*, or for statutory damages in the sum of \$1,000, whichever is greater.
 - (3) Punitive damages, pursuant to California Civil Code Section 3294.

(3-2021)

(4) If a *laid-off employee* is the prevailing party in any legal action taken pursuant to this Division, the court must award reasonable attorney's fees and costs.

(b) Notwithstanding any provision of this Code or any other ordinance to the contrary, no criminal penalties shall attach for violation of this Division.

(“Enforcement” added 9-8-2020 by Emergency Ordinance O-21231 N.S.; effective 9-8-2020.)

§311.0107 No Preemption of Higher Standards

The purpose of this Division is to ensure minimum labor standards. This Division does not preempt or prevent the establishment of superior employment standards or the expansion of coverage by ordinance, resolution, contract, or any other action adopted by the City Council or the Port of San Diego. This Division may not be construed to limit a discharged employee's right to bring a common law cause of action for wrongful termination.

(“No Preemption of Higher Standards” added 9-8-2020 by Emergency Ordinance O-21231 N.S.; effective 9-8-2020.)

§311.0108 Report

On or before 60 days prior to the expiration of this Division, the Mayor must report to the City Council on the effectiveness this Division in promoting employment stability and on the status of recovery of employment and business in the affected industries to a state comparable to that which existed prior to March 4, 2020, and must advise the City Council on the need for further action.

(“Report” added 9-8-2020 by Emergency Ordinance O-21231 N.S.; effective 9-8-2020.)

§311.0109 Sunset Provision

Due to the extraordinary effects on employment in the building services and hotel industries resulting from the COVID-19 pandemic, this Division shall be in effect until March 8, 2022, at which time this Division shall be automatically repealed unless an extension is approved by majority vote of the City Council.

(“Sunset Provision added 9-8-2020 by Emergency Ordinance O-21231 N.S.; effective 9-8-2020.)

(Amended 3-2-2021 by Emergency Ordinance O-21296 N.S.; effective 3-2-2021.)